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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/648,314	08/25/2000	Andrej Gregov	249768045US	6403
25096	7590	10/31/2006	EXAMINER	
PERKINS COIE LLP PATENT-SEA P.O. BOX 1247 SEATTLE, WA 98111-1247			LEROUX, ETIENNE PIERRE	
			ART UNIT	PAPER NUMBER
			2161	

DATE MAILED: 10/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/648,314	GREGOV ET AL.
	Examiner Etienne P LeRoux	Art Unit 2161

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 11 September 2006.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 15, 16, 27-35 and 40-51 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 15, 16, 27-35 and 40-51 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 25 August 2000 is/are: a) accepted or b) objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

    If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

*Claim Status:*

Claims 1-14, 17-20, 25, 26 are cancelled. Claims 21-24 and 36-39 are withdrawn. Claims 15, 16 and 27-35 and 40-51 are pending. Claims 15, 16, 27-35 and 40-51 are rejected as detailed below.

*Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 15 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 15 provides for the use of "selected seed items," but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

*Claim Rejections - 35 USC § 101*

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 15 is rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 15, 16, 27-34, 40-43, 45-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat No 5,616,876 issued to Cluts (hereafter Cluts).

#### **Claims 15, 16, 27-34 and 48 :**

Cluts discloses:

receiving requests from the user to display information about each of a plurality of items [Fig 10, step 1005, style tables identify style categories and weightings associated with seed song, col 17, lines 50-60]

generating a list of recommended items using the selected seed items, wherein the generated list does not contain the selected seed items [system compiles a list of songs, col 18, lines 45-50], wherein the generated list does not contain the selected seed items [col 14, lines 13-27]

displaying the generated list of recommended items to the user [Fig 10, step 1025 top 10 songs presented to listener, col 18, lines 50-55]

Cluts discloses the elements of the claimed invention as noted above but does not disclose selecting as seed items the items the plurality of items that were displayed. [Fig 10, step 1015, identifying other artists who have the same style as the seed song, col 18, lines 5-10]. It would have been obvious to one of ordinary skill in the art to modify Cluts to include selecting as seed items the items the plurality of items that were displayed for the purpose of speeding up the process of generating a playlist called "my favorites" [col 11, lines 45].

Claims 40, 42, 46 and 49:

Cluts discloses removing an item from the plurality of items selected as seed items in response to a request from the user [Fig 10, step 1010, position of style slider]

Claims 41 and 47:

Cluts discloses adding an item to the plurality of items selected as seed items in response to a request from the user [Fig 10, step 1010, position of style slider]

Claims 43 and 50:

Cluts discloses wherein the control is a button that is selected by the user clicking the button [ Fig 5]

Claim 45:

Cluts discloses wherein all of the received requests are received during a distinguished browsing session [col 2, line 5-10]

1. Claims 35, 44 and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cluts in view of US Pat No 5,897,650 issued to Nakajima et al (hereafter Nakajima), as best examiner is able to ascertain.

Claims 35, 44 and 51:

Cluts discloses the elements of claim 27 as noted above. Cluts fails to disclose wherein the control displayed for a distinguished product group is a dragable portion of the information describing the product group, together with a destination region, and wherein the control displayed for the distinguished product group is selected by the user by dragging the dragable portion of the information describing the product group to the destination region. Nakajima discloses wherein the control displayed for a distinguished product group is a dragable portion of the information describing the product group, together with a destination region, and wherein the control displayed for the distinguished product group is selected by the user by dragging the dragable portion of the information describing the product group to the destination region [Fig 2]. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Cluts to include wherein the control displayed for a distinguished product group is a dragable portion of the information describing the product group, together with a destination region, and wherein the control displayed for the distinguished product group is selected by the user by dragging the dragable portion of the information describing the product group to the destination region as taught by Nakajima for the purpose of creating a scrap book via the drag-and-drop mechanism [step 30 in Fig 23]. The skilled artisan would have been motivated to improve the invention of Cluts such that information can be easily inputted and outputted from a document via the drag-and-drop mechanism.

***Response to Arguments***

Applicant's arguments filed 9/11/2006 have been fully considered but are moot based on above new grounds of rejection required by applicant's claim amendments.

***Conclusion:***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: US Pat No 6,662, 231 (Drosset et al) discloses selecting audio files not previously selected by the user based on the user's past selection behavior or based on user's stated preferences.

***Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Etienne P LeRoux whose telephone number is (571) 272-4022. The examiner can normally be reached Monday through Friday between 8:00 am and 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Gaffin can be reached on (571) 272-4146. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Etienne LeRoux

10/27/2006

*Etienne LeRoux*

*Primary Examiner*